IMPRISONMENT OF CRIMINAL CORPORATIONS, THE. *Donald R. Richberg.* Replying to objections recently expressed against the theory, that, as a penalty for crimes of corporations, the state should take over the management of the corporate business for a certain time and reserve its profits wholly to the use of the state. 19 Green Bag 156.

JURISDICTION AND PRACTICE UNDER THE ACT OF CONGRESS, APPROVED JUNE 11th, 1906, RELATING TO THE LIABILITY OF COMMON CARRIERS TO THEIR EMPLOYEES, THE. *John T. Harris.* 12 Va. L. Reg. 866.

LAW CHANGES PROPOSED. *A. U. M.* Suggesting federal divorce regulations within the present powers of Congress. 68 Alb. L. J. 383.

LEGAL ASPECTS OF THE SUBMARINE CABLE AND WIRELESS TELEGRAPH IN WAR. *Charles L. Nordon.* Advocating an international rule to determine under what circumstances cables may be cut. 32 L. Mag. & Rev. 166.

LONG-HAUL LEGISLATION AND LAW-WRITING, BEING REFLECTIONS UPON A NEW WORK ON RAILROAD RATE REGULATION. *Charles E. Grinnell.* Criticizing The Law of Railroad Rate Regulation, by Profs. J. H. Beale, Jr., and Bruce Wyman. 41 Am. L. Rev. 1. See 20 HARV. L. REV. 340.

MARRIAGE IN ROMAN LAW. *Émile Stocquart.* 16 Yale L. J. 303.

PRESUMPTIONS AS TO POSSIBILITY OF ISSUE. *Anon.* Discussing under what circumstances the court will disregard the possibility of issue. 122 L. T. 405.

TREATY-MAKING POWER AND THE RESERVED SOVEREIGNTY OF THE STATES, THE. *Arthur K. Kuhn.* Contending that where a state law and a treaty conflict the former must give way. 7 Colum. L. Rev. 174.

II. BOOK REVIEWS.

THE FEDERAL POWER OVER CARRIERS AND CORPORATIONS. By E. Parmalee Prentice. New York: The Macmillan Company. 1907. pp. xi, 244. 8vo.

In April, 1800, Thomas Jefferson wrote to Edward Livingston:

"The House of Representatives sent us yesterday a bill to work Roosewell's copper mines in New Jersey. I do not know whether it is understood that the Legislature of Jersey was incompetent to do this, or merely that we have concurrent legislation under the sweeping clause. Congress are authorized to defend the nation. Ships are necessary to defense; copper is necessary for ships; mines necessary for copper; a company necessary to work mines; and who can doubt this reasoning who ever played at 'This is the House that Jack Built'?"

Plainly "men may construe things after their fashion clean from the purpose of the things themselves."

To meet such perverted methods is the purpose of Mr. Prentice's book. The work now put forward in small compass is part of the results of twenty years of study devoted by a trained constitutional lawyer to the question, how far the Congress may constitutionally legislate in regard to corporations and common carriers of goods and persons. These questions belong to the domain of constitutional history. In following this development legal decisions tell but part of the story. The practice of states and of Congress must also be considered. Undisputed constructions are not often involved in litigations, and may appear only by study of constitutional practice, which for this reason is sometimes more important than decisions of the highest court. In this history the purpose of state and federal statutes and the contemporary significance of legal decisions have been exhaustively studied, and the results clearly, logically, and concisely stated. Much new material is made available, and important decisions are shown to have a meaning quite different from that which a modern reader would receive from the reports alone.

This is especially true of the great case of Gibbons *v.* Ogden. Marshall's broad references to a federal power to regulate commerce which was plenary and supreme, relate, Mr. Prentice says, only to coasting trade and the federal

revenue. His conclusion is supported by a long and almost forgotten history of interstate transportation under state law. Federal power over commerce did not in the beginning extend over land transportation.

If, after reading this striking history, we turn again to Marshall's decision, his statement, that the sense of the nation as to the power of Congress within the states "is unequivocally manifested by the provisions made in the laws for transporting goods by land between Boston and Providence, between New York and Philadelphia, and between Philadelphia and Baltimore" (9 Wheat. 196), will be read and re-read with wholesome amazement. We should expect to find that there were then federal statutes which, in the present meaning of the phrase, could be said to regulate land transportation. There were no such statutes. The reference is to laws allowing a drawback of customs duties upon exportation of imported goods (*e. g.*, Act of March 2, 1799, § 79). This simple test shows how necessary, for any adequate comprehension of constitutional development, is just such a careful study and analysis of constitutional history as Mr. Prentice has made.

Following the discussion of the constitutional convention, the case of Gibbons *v.* Ogden, and the early history defining federal and state powers, Mr. Prentice traces the course of subsequent history, the influence of slavery, of railroads, and the unforeseen and hardly traceable course of development by which land carriers have come within federal jurisdiction. This jurisdiction was not established at the time of the "Windom Report" in 1874, and the argument of that report for extension of federal power over land transportation has not prevailed. The existing power comes from sources not then thought of, and is of a different nature, and subject to other restrictions, than would have been the case had the power been, as the report argued, within the original scope of the commerce clause.

The concluding chapters of the book contain a review of the Sherman Act with reference to the field for its operation as fixed by the constitutional interpretation of over a hundred years, together with a full discussion of the decisions, state and federal, applying the provisions of the statute.

In this connection Loewe *v.* Lawlor (148 Fed. Rep. 924, Dist. Conn.), reported since Mr. Prentice's book appeared, deserves attention. This case presents in a new aspect the rule of Gibbs *v.* McNeeley, which Mr. Prentice so strongly criticizes (pp. 198–204, 215). Hitherto the Supreme Court has placed the same construction upon the Sherman Act whether applied to combinations of capital or of laborers. Guilt or innocence of the charge of conspiracy has been determined by the character of the defendants' design and of the acts done for its accomplishment, not by the defendants' employment or walk in life. The Constitution, too, has been consistently interpreted. There has been no varying interpretation by which federal jurisdiction is at times broadened to include some combinations and at times narrowed to exclude other combinations. In Gibbs *v.* McNeeley the Circuit Court of Appeals, Ninth Circuit, departed from previous interpretations by extending the operation of the Sherman Act to cover combinations of corporations which had formerly been within state control alone, a decision which has been followed in several cases. This extended jurisdiction the court in Loewe *v.* Lawlor now refuses to recognize in the case of labor unions. Constructions which lead to these contradictions are hardly less than the repeal of law. It is to be hoped that long-recognized principles may soon again prevail. Of this, perhaps, Pocahontas Coke Company *v.* Powhattan, etc., Co. (56 S. E. Rep. 264) and other cases of similar character, as well as Mr. Jenkins' able report on Woman and Child Labor (H. R. 7304, 59th Cong., 2nd Sess.), submitted on February 6, 1907, may perhaps give some sign.

The book is valuable for lawyers, — even for that much-tried brother, the "practicing" lawyer. But it has a wider scope. It should be put — forced, if need be — into the hands of every Senator and Member of Congress.

R. W.